A.F.R

HIGH COURT OF CHHATTISGARH AT BILASPUR
S.B. : HON'BLE SHRI JUSTICE VIJAY KUMAR SHRIVASTAVA
WRIT PETITION NO. 5990/2005

PETITIONER	:	Ajanta Paper and Board Mill, Unit-II, a regd. Partnership Firm, at 13, Durga College Complex, K.K. Road, Raipur, C.G.

versus

Respondents	:	1)	Chhattisgarh State Electricity Board, a corporate body, Constituted under Electricity Act, 2003 through Secretary, at Danganiya, Raipur, C.G.
		2)	Superintending Engineer (Sancharan/Sandharan) Circle, Chhattisgarh State Electricity Board, Raipur (CG).
		3)	Senior Accounts Officer, C.G. State Electricity Board, Raipur.CG.

WRIT PETITION NO. 5991/2005

Petitioner		Umiya Board and Paper Mills Pvt. Ltd., a company regd. under The Companies Act, 1956 at New Timber Market, Fafadih, Raipur, C.G.

versus

Respondents	:	1)	Chhattisgarh State Electricity Board, a corporate body, Constituted under Electricity Act, 2003 through Secretary, at Danganiya, Raipur, C.G.
		2	Superintending Engineer (Sancharan/Sandharan) Circle, Chhattisgarh State Electricity Board, Raipur (CG).

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3 Senior Accounts Officer,
C.G. State Electricity Board,
Raipur.CG.

PRESENT :

Mr. Bhishma Kinger, Counsel for the petitioners.

Mr. Yogesh Pandey, Counsel for the respondents

O R D E R

(Passed on \ /08/2006)

Since both the writ petitions involve common questions, therefore, they are being taken together for disposal by a common order.

2) Ajanta Paper and Board Mill (henceforth, petitioner No.1) was served with a supplementary bill dated 21/06/2005 demanding payment of Rs.21,38,626/- and Umiya Board and Paper Mills Pvt. Ltd., (henceforth, petitioner No.2) was served with a supplementary bill dated 21/06/2005 demanding payment of Rs.38,03,846/- for consumption of electricity by committing theft of electrical energy. Feeling aggrieved, both the petitioners have filed these writ petitions under Article 226/227 of the Constitution of India, 1950 for quashing these bills and issuance of suitable directions to the respondents.

3) The Chhattisgarh State Electricity Board (henceforth, "the Board") is authorized to maintain distribution system for supplying electricity to the consumer. Both the petitioners are the consumers who are supplied with electricity.

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4) On 16/06/2005 the premises of the petitioner No.1 situated at village Umariya, Dist. Raipur, was inspected by Vigilance team of the Board consisting of Executive Engineer (Vigilance) City Circle, Executive Engineer Vigilance (O & M) Circle, Raipur, Executive Engineer (O&M) Division Raipur, Additional Superintendent Engineer (MRT-1), Raipur and its other officers. The premises was checked in presence of representative of petitioner No.1. A Panchnama was prepared by the inspecting officers of the Board in presence of consumer's representative under his signature and signatures of the Inspecting Officers. The power supply was disconnected and complaint of theft of electrical energy was lodged in Police Station, Mandir Hasaud, Raipur on 23/06/2005. The Board made an assessment of energy theft and after assessment of the energy consumed by the petitioner No.1 by committing theft issued supplementary bill amounting to Rs.21,38,626/-. On 11/07/2005 petitioner deposited Rs.1,28,000/- i.e., 20% of the demand of Rs.21,38.626/- and has undertaken to deposit 10% of the remaining bill regularly along with monthly energy bills every month, therefore, supply of electrical energy was restored.

5) On 17/06/2005 the premises of the petitioner No.2 situated at village Saddu, Dist. Raipur, was inspected by the Vigilance team of the Board consisting of Executive Engineer Vigilance (City), Circle Raipur, Executive Engineer Vigilance (O & M), Circle Raipur, Executive Engineer (O&M) Dn. Raipur, Additional Superintendent Engineer, MRT-1, Raipur and its other officers. Inspection was conducted in presence of consumer's

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representative. A Panchnama was prepared under signatures of consumer's representative and Inspecting Officers. On the same day power supply was discontinued and thereafter on 25/06/2005 a complaint of theft of electrical energy was lodged in Police Station, Mowa, Raipur. The Board assessed the consumption of electrical energy used by the petitioner No.2 by committing theft and after assessment a supplementary bill dated 21/06/2005 amounting to Rs.38,03,816/- was served on him. After depositing 20% of the demand and on undertaking given by the petitioner No.2 to deposit 10% of the remaining bill regularly along with monthly energy bill supply of electrical energy was restored on 11/07/2005.

6) Both the petitioners made their representation to the Board and requested for reviewing the case, accordingly their cases for review are pending before the review committee of the Board.

7) Petitioner No.1 challenged the supplementary bill, averring in its petition that on 16/06/2005 an attorney of the petitioner's firm Rajesh Meghani was present; to whom officers of the Board appraised that they have detected some tampering with the wires of the cable; so they are seizing the electric meter and disconnecting the power supply. Rajesh Meghani protested and denied the allegations. Officers of the Board also collected data from the electric meter by meter reading instruments (MRI) and down loaded the same in computer and prepared a report to find out as to how much; less consumption of energy was recorded. MRI disclosed less consumption for a total period of 3 hours and six minutes; for which the petitioner could be charged Rs.52,700/.

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On receipt of supplementary bill, petitioner made a protest on 23/06/2005 and demanded supply of a copy of MRI report. For re-connection of energy supply 20% of the bill was demanded and that was paid. Petitioner was compelled to assure the remaining amount to be paid every month by an installment of 10%. The mandatory provisions of Section 126 of The Electricity Act, 2003 (henceforth, "the Act"), corresponding to clause 11.3 (ii) and 11.6 Chapter 2 of the Chhattisgarh State Electricity Supply Code 2005 (henceforth, "the Code") have not been complied with. The petitioner was not afforded due opportunity of hearing. Under duress, petitioner is being compelled to fulfill the illegal demand made by the respondents vide their supplementary energy bill. The supplementary bill being not final, petitioner is precluded from preferring appeal under Section 127 of the Act. The bill prepared by the respondents is not in consonance with Section 126 (1) (5) & (6) of the Act, and also the assessment is not according to MRI report.

8) Petitioner No.2 is a company registered under the Companies Act, 1956 challenged the supplementary bill averring that on 17/06/2005 one of the Directors of the Company Narayanji Patel was present to whom officers of the Board appraised that they have detected some tampering with the wires of the cable so they are seizing the electric meter and disconnecting the power supply. Narayanji Patel protested and denied the allegations. Data from the electric meter by meter reading instrument was also collected and down loaded in the computer and report was prepared to find out as to how much less consumption of electricity has been recorded therein. After

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receipt of supplementary bill, petitioner vide its letter dated 24/06/2005 vehemently objected to it and demanded a copy of MRI report and expressed his willingness to pay 20% of the bill for re-connection of the electricity supply, but he was compelled to undertake to pay 10% of the disputed amount monthly along with regular electricity bill in addition to 20% of the bill already offered by him. For unauthorized use of electricity Section 126 of the Act is applicable and in absence of a final bill, petitioner is not entitled to prefer appeal under Section 127 of the Act. The mandatory provisions of Section 126 of the Act, corresponding to clause 11.3(ii) and 11.6 Chapter 2 of the Code have not been complied with. The petitioner was not afforded due opportunity of hearing. The amount has not been assessed correctly in consonance with the provisions of Section 126 (1), (5) & (6) of the Act.

9) Both the petitioners referred their disputes before the forum for Redressal of Grievances of Consumers (henceforth, "the Forum") but the forum erroneously and illegally refused to entertain the complaint on the disgust that the matter relates to theft of electricity. Though the petitioners have demanded reference of disputes to review committee, but the Committee has no jurisdiction to hear and resolve the dispute.

10) Respondents in their return pleaded that on 16/06/2005 vigilance team of the Board visited the premises of the petitioner No.1 who inspected., checked and found that armoured cable coming from CT/PT Unit to energy meter have

been cut and its armour was tempered. It was found that wires of CT were also inter changed and the cable connecting CT/PT unit with meter were found disturbed. A Panchnama was prepared by the inspecting officers of the Board in presence of consumer's representative under his signature and signatures of the Inspecting Officer. Complaint of theft was lodged on 23/06/2005. After due assessment interim supplementary bill amounting to Rs.21,38,626/- was issued to the petitioner No.1 vide letter dated 21/06/2005. Petitioner No.1 also requested to refer the dispute to the Review Committee of the Board for its decision, therefore, the matter has been sent to Review committee of the Board and the matter is still pending before it. The matter relates to theft of electricity, therefore, videography was also done in order to preserve the evidence of theft in presence of vigilance team and representative of the consumers. MRI data was loaded in the computer and according to report, Y Phase and B Phase input of control cable was found disconnected by cutting on 21/10/2004 at 0.47 hours. The input voltage to meter Y phase and B Phase was blocked by interfering with the cables. Supply of electricity has been restored on depositing of 20% of the demand and assurance that 10% of the remaining be paid on regular monthly installment. Petitioner No.1 also approached the Chhattisgarh State Electricity Regulatory Commission for resolving the dispute, by suppressing material facts, therefore, the commission refused to entertain the case.

11) On 17/06/2005 vigilance team of the Board in presence of the representative of petitioner No.2 inspected its

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premises and found that armoured cable coming from CT/PT unit to energy meter have been cut and its armour was tempered. It was found that wires of CT were also inter changed and the cable connecting CT/PT unit with meter were found disturbed. A Panchnama was prepared under signatures of consumer's representative and Inspecting Officers. On the same day power supply was discontinued. On 25/06/2005 a complaint of theft of electrical energy was lodged in Police Station, Mowa, Raipur. The Board assessed the consumption and issued interim supplementary bill amounting to Rs.38,03,846/-. Petitioner for restoration of electricity offered his willingness to deposit 20% of the demand and has undertaken to deposit 10% of the remaining bill regularly along with monthly energy bill and also requested for reviewing the case by the Board, therefore, the matter has been referred for consideration to Review Committee. Data collected from the premises of the consumer from MRI was unloaded in the computer and according to its report, R phase missing potential from 25/09/2004 to 13/10/2004 several times. The input voltage to meter R phase was blocked by interfering with the cables.

12) Section 126 of the Act is not applicable to the case. Both the petitioners consumed electrical energy by stealing it. Therefore, it is to be dealt with under the provisions of Chhattisgarh State Electricity Supply Code 2005 (henceforth, "the Code") relating to matter, which falls under Section 135 of the Act. The supplementary bills have been prepared as per procedure adopted by the Board vide No.05/01/GG/318-Vol.-XI-B/23/5120 dated 20/12/1999. The Review Committee is competent to entertain the complaint and decide.

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13) Both the petitioners in their rejoinders denied the allegations leveled against them and further averred that provisions contained in Clause 11.3 to 11.6 (e), on the one hand and 11.8(a) to (j) on the other enumerated under the Chapter 2 "Prejudicial use of Supply" of the Code are contrary to each other and the provisions contained in Clause 11.8(a) to (j) are ultra vires of the provisions of both the Sections 126 and 135 of the Act and the same deserves to be struck down as ultra vires.

14) The Code came into force from 22/09/2005 whereas the vigilance team of the Board inspected the premises of the petitioner No.1 on 16/06/2005, prepared Panchnama, disconnected the electricity supply and lodged a complaint of theft of electricity energy in Police Station, on 23/06/2005. The Board after assessment issued interim supplementary bill amounting to Rs.21,38,626/- vide letter dated 21/06/2005. The premises of the petitioner No.2 was inspected by the vigilance team of the Board on 17/06/2005 and on the same day power supply was disconnected, Panchnama was prepared and a complaint of theft of electricity energy was lodged in Police Station on 25/06/2005. The Board after assessment issued interim supplementary bill amounting to Rs.38,03,846/- vide letter dated 21/06/2005.

15) It is obvious that inspection of the premises was done in the month of June, 2005, assessment of loss was calculated, supplementary bill was supplied to the petitioners in the same month. The Code came into force from 22/09/2005. During

pendency of both these petitions Chhattisgarh State Electricity Rules 2006 (henceforth, "the Rules") has been enforced from 23/03/2006. Therefore, provisions regarding unauthorized use of Electricity and theft of electricity contained in Code as well in Rules are not applicable to the instant case so far it relates to inspection of premises, assessment of loss of electricity and demand made by Board by making supplementary bills to both the petitioners.

16) The Electricity Act, 2003 Sections 1 to 120 and 122 to 185 came into force on 10/06/2003. Section 185 of the Act repealed Indian Electricity Act, 1910, The Electricity (Supply) Act, 1948 and The Electricity Regulatory Commission Act, 1998. In June 2005 the Act was in force, but for assessment of loss of energy by unauthorized use or by theft, fresh rules or regulations or orders were not issued under the Act, therefore, whether in absence of fresh rules, regulations or orders Board was incompetent to detect theft or unauthorized use of electricity and to realize the loss, to elicit the answer we have to take shelter of Section 24 of the General Clauses Act, 1897 which reads as below:

> *"**Sec.24.- Continuation of orders, etc. issued under enactments repealed and re-enacted.**- Where any (Central Act) or Regulation is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise, expressly provided any (appointment, notification), order, scheme, rule, form, or bye-law, (made or) issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been (made or) issued under the provisions so re-enacted, unless and until it is superseded by any (appointment, notification), order, scheme, rule, form or bye-laws (made or) issued under the provisions so re-enacted (and when any (Central Act) or Regulation which by a*

notification under Secs.5 or 5-A of the (Scheduled Districts Act, 1874 (14 of 1874) or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from and re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section."

17) From bare reading of the aforesaid provision, it is manifest that "General Conditions for Supply of Electrical Energy and Scale of Miscellaneous and General Charges" notified earlier shall so long it is not in consistent with provisions, re-enacted continue in force and be deemed to have been made under the provisions so re-enacted unless and until superseded in consistent with the provisions of law i.e., re-enacted.

18) Sections 126 and 154 (5) & (6) of the Act read as below:

*"**126. Assessment**.- (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any persons, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.*

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom a notice has been served under sub-section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who may, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him;

Provided that in case the person deposits the assessed amount, he shall not be subjected to any further liability or any action by any authority whatsoever.

(5) If the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, it shall be presumed that such unauthorized use of electricity was continuing for a period of three months immediately preceding the date of inspection in case of domestic and agricultural services and for a period of six months immediately preceding the date of inspection for all other categories of services, unless the onus is rebutted by the person, occupier or possessor of such premises or place.

(6) The assessment under this section shall be made at a rate equal to one-and-half times the tariff applicable for the relevant category of services specified in sub-section(5).

***154 (5)** The Special Court may determine the civil liability against a consumer or a person in terms of money for theft of energy which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of twelve months preceding the date of detection of theft of energy or the exact period of theft if determined whichever is less and the amount of civil liability so determined shall be recovered as if it were a decree of civil court.*

***(6)** In case the civil liability so determined finally by the Special Court is less than the amount deposited by the consumer or the person, to the Board or licensee or the concerned person, as the case may be, shall be refunded by the Board or licensee or the concerned person, as the case may be, within a fortnight from the date of communication of the order of the Special Court together with interest at the prevailing Reserve Bank of India prime lending rate for the period from the date of such deposit till the date of payment."*

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19) Unauthorized use of electricity has been defined under Section 126 (6) (b) of the Act and meaning of theft of electricity has been expressed in Section 135 of the Act. To elicit whether unauthorized use of electricity includes theft or otherwise, both the provisions are required to be compared. A comparative chart is shown below:

Unauthorized use of electricity as defined u/S.126 (6)(b) of the Act.	**Theft of electricity in accordance with Section 135 of the Act.**
126 (6) (b)- "unauthorized use of electricity" means the usage of electricity- (i) by any artificial means; or (ii) by a means not authorized by the concerned person or authority or licensee; or (iii) through a tampered meter, or (iv) for the purpose other than for which the usage of electricity was authorized.	**135. Theft of electricity.- whoever, dishonestly,-** (a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee; or (b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or (c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity.

20) It is conspicuous that unauthorized use of electricity is one of the element, whether the electricity has been used unauthorisedly or by theft,, therefore, whether the matter relates to theft of electricity or otherwise for unauthorized use of electricity, the loss of energy is required to be assessed and the

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unauthorized consumption can be assessed in accordance with Section 126 of the Act, but if unauthorized use of electricity is wrapped with other conditions applicable for theft the loss will be calculated taking into consideration the provision of Section 154 (5) of the Act.

21) Under the Act, it is conspicuous that for unauthorized use of electricity "Assessing Officer" designated by the State Government has given power to assess the loss, but no separate arrangement has been made under the Act to assess the loss in cases of unauthorized use of electricity by theft, but in both the arena common feature consist of unauthrosied consumption therefore, in accordance with Section 126 of the Act for unauthorized use of Electricity simplicitor loss shall be assessed and "Assessing Officer" shall assess the loss caused by "unauthorized use of electricity by theft" in consonance with Section 154(5) of the Act.

22) Before coming into force of the Act "provisional assessment" was to be done by the direction prescribed under General Condition of Supply of Electricity Energy and scale of Miscellaneous & General Charges" for unauthorized use of electricity simplicitor and for theft subject to review by "Review Committee" on representation of the consumer, and the procedure for calculation prescribed therein are not in consistent with the Act re-enacted as the procedure prescribed earlier as referred to by the respondent for assessment and billing vide Board's circular dated 20/12/1999 implicit the provisions for assessment according to

that consumer was held liable to be billed at two times the normal tariff applicable to the consumer and provisional bill was to be prepared covering the period from the date of connection to the date of detection of theft or total period of one year or less. Provisions for submission of representation and to be decided by the review committee is also there, even the assessment made by the review committee was made appealable and virtually identical to those, provisions are made in re-enactment.

23) Clause 12.14 of the Code is reproduced below:

> *"12.14. with the issue of this Supply Code, the "General conditions for Supply of Electrical Energy and Scale of Miscellaneous and General Charges" issued by erstwhile MP Electricity Board/Chhattisgarh State Electricity Board, shall cease to operate from the date of its publication in the Chhattisgarh Rajpatra."*

24) The "Code" superseded previous directives which were applicable for detection of unauthorized use of electricity or theft of electricity, assessment of loss there to and procedure adopted for billing and recovery, therefore, before coming into force of the Code, provisions contained in directive "General conditions for Supply of Electricity Energy and Scale of Miscellaneous and General Charges" were applicable.

25) From legal provisions as discussed above, it is held that although the Act came into force on 10/06/2003 (except Section 121), yet the directions implicit in "General conditions for Supply of Electricity Energy and Scale of Miscellaneous and General Charges" were applicable to cases pertaining to unauthorized use of Electricity simplicitor or by theft up to

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21/09/2005 and thereafter the provisions contained in Code. After the enforcement of rules, the rules contained therein are applicable together with those provisions of the Code, not in consistent with the rules. Accordingly in both the instant cases so far as inspection, direction, assessment billing, demand etc. are concerned, "General condition for Supply of Electricity, Energy and Scale of Miscellaneous and General Charges" were applicable.

26) Learned counsel for the petitioners placing reliance on judgment passed by ***Hon'ble the Apex Court in S.L. Kapoor Vs. Jagmohan and Others, reported in AIR 1981 SC 136*** contended that the respondents without providing opportunity of hearing have disconnected the energy supply and issued the provisional bill which is against the principle of natural justice and also relying on judgment rendered by ***Hon'ble the Apex Court in Bombay Electricity Supply & Transport Undertaking Vs. Laffans (India) (P) Ltd., reported in (2005) 4 SCC 327*** contended that consumption of electricity was recorded in the meter and without referring the dispute as to correctness of the meter, the demand by supplementary bill has been raised. On the other hand, learned counsel for the respondents relying on judgment rendered by ***Hon'ble the Apex Court in M.P. Electricity Board, Jabalpur and others Vs. Harsh Wood Products and another, reported in AIR 1996 SC 2258*** contended that in accordance with "General condition for Supply of Electricity Energy and Scale of Miscellaneous and General Charges" which was applicable to both the petitioners and agreeing those conditions they took electrical connection. Those conditions implicit, a condition that if a consumer is found obstructing and

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concealing the energy or maliciously causing the energy to be wasted, the energy supply was liable to be disconnected without notice and in cases of theft supply is required to be disconnected and provisional bill after assessment is to be issued against the defaulter. The matter relates to theft of electrical energy and not relates to any dispute regarding meter. Therefore, before disconnecting the electrical supply which has been restored now after deposit made by the petitioners no hearing is necessary and the supplementary bill in absence of reference of dispute of electrical energy regarding meter does not suffer from any illegality.

27) Vigilance team of the Board inspected the premises of both the petitioners and whatever tampering, discrepancies, damage and change were found, were noted in a Panchnama. Panchnama has been signed by the Inspecting Officers and also by the representatives of both the petitioners. A copy of the inspection report has also been made available in the petition. It was found that armoured cable coming from CT/PT Unit to energy meter has been cut and its armour was tampered. Wires of CT were also inter changed and cable connecting CT/PT unit with meter were found disturbed.

28) It is conspicuous that the matter does not relate to any dispute of meter, but the matter relates to consumption of electrical energy consumed by the petitioners otherwise than prescribed mode of distribution. The Board, prima facie, hold both the petitioners responsible for commission of theft of electrical energy and, therefore, reported the matter to Police for electrical theft and after assessment issued supplementary bill demanding

payment of loss sustained by the Board by consumption of electrical energy through theft. It is evident that according to General conditions for supply of electrical energy, which is binding on the petitioners on detecting unauthorized use or prima facie, commission of theft without notice electrical supply was to be disconnected and provisional bill after assessment was to be prepared and was required to be served on the defaulter. Therefore, in the present case, the contention of the petitioner has no force, therefore, the same is repelled. Even otherwise, so far as supplementary bill is concerned, earlier before coming into force of the Code, petitioners have right to submit their case to Review Committee which they exercised and their representation is pending before Review Committee for consideration where they will have full opportunity of hearing and thereafter Review Committee has to give a final decision that is also subject to appeal. After coming into force of the Code, aggrieved person has been provided with an opportunity of representation and designated authority has power to pass final assessment after opportunities of hearing to the defaulter. Therefore, it is premature to raise a question that respondents withheld opportunity of hearing.

29) Learned counsel for the petitioners further contended that forum declined to entertain their complaints alleging that it relates to theft and for challenging the final assessment no appellate authority has been notified, therefore, they are constrained to knock the door of this Court. On the contrary, learned counsel for the respondents contended that without any decision given by the Review Committee petitioners are not prejudiced in absence of notification of the appellate authority.

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30) Pursuant to sub-sections (5) (6) & (7) of Section 42 of the Act, Chhattisgarh State electricity Regulatory Commission framed the regulation providing for guidelines to the licensee for setting up of a comprehensive system of redressal of consumer grievances including forum for redressal of grievances of consumer; for the appointment of Ombudsman by the Commission and the procedure to be followed for settlement of grievances by the Ombudsman and for matters incidental or ancillary thereto and the regulation came into force from 30.09.2004. Subsequently another regulation was enforced from 15.02.2005 and some amendments were made on 29.07.2005. The regulation defines "complaint" which includes "Electricity Bill related complaints, actions of vigilance squad and so on. These regulations provide procedure for redressal of grievances through Forum and "Ombudsman".

31) The Rules which came into force have prescribed the Appellate Authority and they described it in Rule 8 of the Rule. Under Section 154(5) the Special Court has also been authorized to determine the civil liability against the consumer or a person in terms of money for theft of energy though the power has been given to Special Court, but that can be exercised by the Special Court after determining that the theft of energy has been committed, therefore Special Court may while passing judgment determine it or subsequent thereto at the behest of any of the parties, the power is not absolute, but it is discretionary and in case assessment has taken a final shape by implication of the provision of the Acts, Rules or Regulations, in that case Special Court need not require to determine the civil liability, otherwise, there will be anomaly

which will result in absurdity, therefore, Special Court though empowered, but shall use its power at the conclusion of the trial and thereafter in those cases where assessment of loss has not taken finality under provisions of the Acts, rules or regulations.

32) Section 42 sub-sections (5), (6) & (7) provide provision for redressal of grievances of the consumer. The Electricity Rules 2005, Rule 7 (a) does not restrict the redressal of the consumer relating to unauthorized use of electricity simplicitor or by theft.

33) From the foregoing discussion, it is established that if a consumer is charged for unauthorized use of electrical energy simplicitor or by theft, earlier before coming into force of the Code, he was entitled to submit his representation for final assessment before the Review Committee and thereafter to file appeal. After coming into force of the Code, on submission of the provisional bill, he is entitled to object or file representation and after due consideration of his objection or representation, final assessment is required to be passed and against final assessment he is entitled to file an appeal in accordance with law. After coming into force of the Rules, after service of provisional assessment, he is entitled to file objection in accordance with rules and after final order he is entitled to file an appeal before the Appellate Authority. Another remedy available with the consumer is to raise the complaint regarding electricity bill or action of vigilance squad before the forum and Ombudsman in accordance with law and third remedy available with the consumer is in case of theft to wait for conclusion of the trial and at the time of final judgment or thereafter to pray Special Court for passing order in accordance

with Section 154-(5) of the Act. It is his choice to choose and once any finality regarding assessment has been achieved, no other jurisdiction shall have power to decide the same again.

34) Both the petitioners who are consumers when took electricity supply are supposed to know the prevailing rules, directives and regulations and it appear that they know it, therefore they submit their dispute before the Review Committee. They knew that final assessment is subject to appeal, they are supposed to know that non-redressal of their grievance by the forum can be challenged before the Ombudsman, but having so many alternative remedies available, without waiting for appropriate stage have, approached this Court for quashing the bills and appropriate directions.

35) Taking into consideration all the factual aspects of the case as well as law applicable to it, the provisional bills supplied to both the petitioners neither causes prejudice to the petitioners, nor on equity or principle of natural justice at this stage are taking away their constitutional right or causing any harm in violation of law, therefore do not require to be quashed under constitutional jurisdiction as envisaged under Article 226 of the Constitution of India

36) In the result, with the aforesaid observations, both the petitions deserve to be dismissed and are accordingly dismissed.

Sd/-
V.K. Shrivastava
Judge

Raju